PUBLIC UTILITIES COMMISSION
STATE OF MAINE

Docket No. 97-739

February 11, 1998

PUBLIC UTILITIES COMMISSION
Rulemaking: Bidding Processes and Terms and Conditions for Standard Offer Electric Service (Chapter 301)

ORDER PROVISIONALLY ADOPTING RULE AND STATEMENT OF POLICY BASIS

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. INTRODUCTION

In this Order, we provisionally adopt rules governing the terms and conditions of standard offer service and the process for selecting standard offer providers.

The Legislature has decided that all Maine electricity consumers shall have the right to purchase generation services from competitive providers beginning on March 1, 2000.[1] In doing so, the Legislature recognized that, at least initially, not all consumers would want or be able to obtain generation from the competitive market. Accordingly, the Act requires the availability of "standard offer service" for all electricity consumers. 35-A M.R.S.A. § 3212. This service eliminates the need for consumers to immediately select a competitive electricity provider. As the competitive market matures and consumers become more aware of industry changes, the Commission will reevaluate the need and structure of standard offer service. The Act specifies that standard offer service will remain available to all electricity consumers at least until March 1, 2005. 35-A M.R.S.A. § 3212(4).

Section 3212 requires the Commission to adopt rules establishing (1) terms and conditions for standard offer service and (2) a bid process for the selection of standard offer service providers. The terms and conditions must include provisions for customer entry and exit, protections against provider default, appropriate rate designs, averaged prices, and credit and collection practices. The selection process rules must include provisions for the necessary load and credit data that utilities

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[1]During the 1997 Legislative session, the Maine Legislature enacted P.L. 1997, Chapter 316, "An Act to Restructure the State's Electric Industry" (the Act). The Act is codified as Chapter 32 of the Title 35-A (35-A M.R.S.A. §§ 3201-3217).

are to make available to bidders, the duration of the standard offer bids, limitations on utility affiliate bids, and provisions to ensure equal access to utility information. The Act also requires the Commission to consider methods to ensure, to the greatest extent possible, there are at least three providers of standard offer service in each utility service territory as long as that does not result in "significant adverse rate impacts." Finally, the Act specifies that the Commission shall administer the bid process and select the standard offer provider(s) for each transmission and distribution (T&D) service territory.

Both rules required by section 3212 are “major substantive rules” as defined and governed by 5 M.R.S.A. §§ 8071-8074. We have included both rules in the single chapter (301) provisionally adopted in this rulemaking. Pursuant to the process described in 5 M.R.S.A. § 8072, the Legislature must review the provisional rule and authorize its final adoption either by approving it with or without change or by taking no action.

II. RULEMAKING PROCESS

On September 30, 1997, we issued a Notice of Rulemaking and a proposed rule on standard offer terms and conditions and the provider selection process. Prior to initiating the formal rulemaking process, we conducted an Inquiry in Docket No. 97-519 to obtain comments and proposals from interested persons on all aspects of the standard offer rule. The comments obtained in the Inquiry were constructive in the development of the proposed rule.

Consistent with rulemaking procedures, interested persons were provided an opportunity to file written comments on the proposed rule. The following persons filed written comments: Maine Electric Consumers Coalition (Coalition);[2] Central Maine Power Company (CMP); Bangor Hydro-Electric Company (BHE); Maine Public Service Company (MPS); the Dirigo Electric Cooperative (Dirigo);[3] The Industrial Energy Consumer Group (IECG); Madison

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[2]The Public Advocate submitted the comments on behalf of the Coalition whose members are: American Association of Retired Persons; Maine Association of Interdependent Neighborhoods; Maine Community Action Association; Coalition for Sensible Energy; Kennebec Valley Community Action Project; Maine Public Advocate; Conservation Law Foundation; Independent Energy Producers of Maine; Maine Oil Dealers Association; Industrial Energy Consumers Group; Maine Council of Senior Citizens; and Richard Rudolph.

[3]The Dirigo Electric Cooperative members are: Eastern Maine Electric Cooperative, Fox Island Electric Cooperative, Houlton

Paper Industries (MPI); County of Cumberland, and Enron Corp. In addition to written comments, the Commission held a technical conference to allow interested persons to discuss their comments and to respond to questions regarding their positions.

The Commission appreciates the efforts of the interested persons in providing comments on the many complex issues involved in implementing standard offer service. The comments were instrumental in developing a rule that, in our view, promotes the legislative policies embodied in the Act's standard offer provisions.

III. GENERAL POLICY AND OBJECTIVES

In our Notice of Rulemaking, we stated two general objectives that should guide the provisions of a standard offer rule. The first was that standard offer service, from the customer's perspective, should resemble electric service now available from existing utilities. The second objective was that the bidding process should be as simple as possible and designed so that bids may be compared easily and evaluated objectively.

After reviewing the comments on the proposed rule, we find no reason to deviate from these two general objectives. Accordingly, the rule we provisionally adopt today is designed so that customers who do not choose a competitive provider will obtain service that is similar, in most respects, to current electric service. Such customers will continue to receive a single bill from their T&D utility for both generation and T&D services; the terms and conditions, as well as credit, collection and disconnection practices, for all aspects of electric service remain subject to Commission regulation; and standard offer customers continue to contact a single entity, the T&D utility, for questions and complaints about their service. This general design promotes a smooth transition to a competitive environment by allowing customers who for any reason do not obtain service from a competitive provider to continue to obtain service closely resembling their current service.

The provider selection rules are designed to produce standard offer bids that can be objectively compared and evaluated. There will be no opportunity to submit bids that have a wide variety of pricing and service approaches. As such, the Commission will not have to compare, for example, a bid containing the lowest overall price with a bid that provides greater benefits to a particular customer class. Under the provisional rule, the only variable for standard offer bid is

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Water Company, Kennebunk Light and Power District, Madison Electric Works, and Van Buren Light and Power District.

price, thus making the evaluation of the bids simple and objective.

IV. DISCUSSION OF PROVISIONAL RULE AND COMMENTS

In the following sections, we discuss the provisions of the provisional rule, positions of commenters, and our rationale for either maintaining or modifying the provisions of the proposed rule.

A. Section 1: General Provisions and Definitions

Subsection A of section 1 states the scope of the rule. Subsection B contains definitions; some of the definitions are contained in the statute (35-A M.R.S.A. § 3201) but are also included in the rule for convenience. Subsection C specifies the customers and the load for which standard offer service is available, and provides that the service will be available at least until 2005.

MPI commented that the definition of core customer classes in subsection B is unclear and noted references in the proposed rule to competitive provider that should instead refer to competitive electricity provider. The provisional rule incorporates MPI’s latter, editorial corrections. However, we did not change or expand upon the definition of core customer classes. To the extent there is ambiguity about whether a class is core or optional, it will be resolved when the Commission designates core classes in the bill unbundling proceeding required by 35-A M.R.S.A. § 3213(1).

Subsection C clarifies the language contained in the proposed rule in response to concerns expressed by the Coalition, MPI and the IECG that the rule not prohibit customers that self-generate a portion of their electricity from receiving standard offer service. Such a prohibition was not contemplated. The provisional rule clarifies this point by referring to the customer’s “total retail electricity purchases” rather than “total load,” the term contained in the proposed rule.

The provisional rule does not allow customers to split their retail electricity purchases between the standard offer and competitive providers, except that customers that have multiple service accounts with the T&D utility may take standard offer service for individual accounts rather than for all their retail purchases. This approach is administratively straightforward and reduces opportunities for gaming such as by stratifying load and apportioning that with the highest cost to the standard offer. Allowing such gaming would likely increase the cost of standard offer service for all customers.

MPI and the IECG commented that customers ought to be able to purchase standard offer service for portions of their total purchases. They noted that such flexibility could benefit customers and encourage them to gradually become independent of standard offer service. IECG stated that proper rate design of the standard offer should prevent gaming. We do not disagree with MPI's and IECG's observations that allowing customers to stratify their load between standard offer service and the competitive market could benefit the customers that do so. However, it would be difficult, if not impossible, to protect other customers from any resulting cost increases to standard offer service. If customers want flexibility or to test the waters in the competitive market, they can exit and enter the standard offer in whole load increments pursuant to the provisions of section 2 of the rule. We also note that the purpose of the standard offer is to provide a transitional service for those customers who are uninterested or unable to enter the competitive market. It is inconsistent with this purpose to allow customers to be partially in the competitive market and partially on the standard offer.

B. Section 2: Rates, Charges and Procedures for Initiating and Terminating Standard Offer Service

1. Subsection A: Rates and Rate Schedules

Subsection A contains provisions for rate schedules and describes the rate structure for standard offer service. Paragraph 1 states that the rates for standard offer service will be available for public inspection. Paragraphs 2 and 3 require a standard offer provider to use the customer class and rate structure that are currently contained in bundled electric rates. Specifically, paragraphs 2 and 3 require standard offer service prices to be a uniform percentage of each unbundled generation rate element[4] of the T&D utility; utility rates will be unbundled into generation and T&D components in a future Commission proceeding required by 35-A M.R.S.A. § 3213(l). The provision is consistent with the objectives of designing standard offer service to resemble present utility service and establishing price as the only bid evaluation criterion. Although not noted by any commenter, paragraphs 2 and 3 of the proposed rule were not completely consistent; the language of paragraph 2 suggested that the rate structure mirror the future rather than current structure. We have corrected this so that the provisional rule clearly defines standard offer rate design as described above.

[4]For those classes that have discounts pursuant to pricing flexibility plans, the rate element for this purpose will be the rate element cap.

Requiring standard offer service rates to be a uniform percentage of the generation component of current rates will eliminate opportunities to shift costs among customer classes that purchase standard offer service. The rule removes the opportunity for standard offer bidding to favor certain classes over others. It also enables the Commission to easily compare and objectively evaluate proposals by removing the need or opportunity to judge bids on the basis of how particular customers would fair in one proposal as opposed to another.

CMP expressed concerns about basing standard offer rates on current rate design. No other person filed comments on this provision. CMP noted that the rates of a T&D utility might be quite different from those currently in place for vertically integrated service. According to CMP, having standard offer rates in 2000 and thereafter that do not correlate with then current T&D rates could confuse customers, and be difficult to administer and bill. We do not dispute CMP’s observations. However, the approach contained in the provisional rule is workable and remains the best means to adhere to the objectives stated above. Although there may be benefits to CMP’s approach, such as ease of administration and customer understanding, it is not necessary to align standard offer rate design with that of future T&D-only service.[5] Moreover, CMP’s approach could cause perverse outcomes, such as energy pricing that does not charge based on the amount of energy consumed, or it could constrain the design of efficient and equitable T&D rates. We will be cognizant of CMP’s concerns as we unbundle rates and design the T&D rates that will take effect when retail access begins.

Paragraph 4 addresses standard offer rates in the event the Commission selects more than one standard offer provider. Section 3212(2) requires the Commission to select at least three standard offer providers in each T&D utility service territory, as long as doing so does not result in a significant adverse rate impact. The method for determining whether there is an adverse rate impact and whether more than one provider should be selected is contained in section 8(C) of the rule. Paragraph 4 states that, if more than one bidder is selected, standard-offer rates will equal the weighted average of the accepted bid prices of the selected providers. In this way, all standard offer customers will pay the same rates even if there are multiple standard offer providers.

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[5]For example, the rate design of local telephone service does not match long distance. Nevertheless, billing is adequately administered and customer understanding in this respect has not been a problem.

Paragraph 5 states that standard offer service rates shall be geographically averaged within each T&D utility's service territory. This provision is consistent with the language of 35-A M.R.S.A. § 3212(1)(D) requiring the Commission to retain averaged prices within customer classes. The Commission did not receive any comments on this provision.

Paragraph 6 allows each T&D utility to establish a charge in its rate schedule applicable to standard offer customers for costs it incurs related to metering, billing and other administrative functions. This paragraph is unchanged from the proposed rule. CMP filed the only comment on this paragraph, stating it strongly supported that standard offer customers be fully responsible for costs T&D utilities incur related to standard offer service.

2. <u>Subsection B: Establishment and Reestablishment of Standard Offer Service</u>

Subsection B describes three methods by which consumers may become standard offer service customers. In the first two cases, electricity consumers do not take any action to obtain standard offer service. Paragraph 1 describes the process for consumers who, for whatever reason, do not choose a competitive electricity provider on the date that retail competition and standard offer service will begin, March 1, 2000. This paragraph states that if a consumer has not chosen a competitive electricity provider by February 1, 2000, the consumer will become a standard offer service customer.

Paragraph 2 states that consumers who become customers of the T&D utility after March 1, 2000, and who do not choose a competitive electricity provider, will also automatically be assigned to standard offer service.

Paragraph 3 addresses consumers who selected competitive generation providers but have chosen to return to standard offer service. That return is unrestricted, except for fees to cover administrative costs.

The Commission received no comments on these proposed provisions. The provisional rule includes the language of the proposed rule, but adds that customers returning from the competitive market must pay the applicable transfer fees contained in subsection E.

3. Subsection C: Termination of Standard Offer Service

Subsection C contains three provisions that address departures from standard offer service. These provisions allow free departure for smaller customers and impose restrictions for larger customers. These provisions balance the goals of promoting movement to the competitive market and preventing strategic entry and exit, or gaming, of the standard offer service that would likely increase standard offer prices. All customers must pay cost-based administrative fees, provided for in subsection E, whenever they transfer out of or into the standard offer. However, nothing in these rules precludes competitive providers from paying these fees on behalf of customers switching their service, a practice common among competitors for telephone customers.

Paragraph 1 states that residential and smaller non-residential customers may leave and enter standard offer or competitive service without restriction (other than payment of the subsection E fees). Paragraph 2 applies to larger, non-residential customers and to aggregated groups of customers if their aggregate load exceeds 50 kilowatts. Subparagraph (b) states that such customers who have never obtained service from a competitive provider may leave the standard offer one time without restriction. Subparagraph (c) applies to larger customers who have previously entered the competitive market but who have reestablished standard offer service pursuant to subsection B(3). The subparagraph states such customers may leave standard offer service without restriction if 12 months have passed since the customer returned to standard offer service or, if 12 months have not passed, upon payment of an opt-out fee equal to an average monthly bill.

In the earlier Inquiry on standard offer, several commenters expressed concern that customers could game the simultaneous existence of a competitive market and standard offer service by purchasing standard offer service at favorable times (e.g., when, on a seasonal basis, competitive market rates might be higher) and returning to the competitive market when rates were lower. Such activity could result in higher standard offer prices as providers seek compensation for this risk in their bids. The proposed rule contained two alternatives that were intended to address this problem. We received several comments addressing this issue.

The first alternative in the proposed rule addressed termination of standard offer service for *all* customers. It proposed an opt-out fee (equal to the customer's average monthly bill) for customers that leave standard offer service within 12 months of their last return. The charge would not apply, however, until a customer leaves standard offer service for the second time.

The second alternative would have imposed the same provisions as on the first alternative, but only on larger customers (defined as commercial customers with a demand of 50 kilowatts or more). The second alternative also would have established a different deterrent mechanism for smaller customers (defined as all residential customers and commercial customers having a demand of less than 50 kW): during the first year of competitive service, a smaller customer could leave and reenter an unlimited number of times; after that first year, a customer returning to standard offer service would have to pay a reentry fee of $50.00 for the first reentry and $100.00 for subsequent reentries.

The Coalition argued that the extent to which small customers might game has been overstated. The Coalition stated that the proposed opt-out charge made sense for larger, more sophisticated customers and that such a charge is sufficient to address the gaming risk. The Coalition stated that if the second alternative was adopted, it should not apply to re-entry to standard offer service caused by the competitive supplier’s failure to provide service, or if a customer could not afford the charge. CMP opposed all restrictions on entry or exit from the standard offer on the ground that such charges will discourage customers from entering the competitive market. The IECG and MPI supported the first alternative, but MPI argued that the opt-out fee of an average monthly bill was "too high" and that deterrence could be achieved at a lower level. The Commission received no other comments on the magnitude of the opt-out charge, and MPI did not provide an explanation of why the proposed fee would be too high or the level that would provide sufficient deterrence.

BHE, Dirigo and MPS favored the second alternative. BHE noted, however, that a re-entry fee may be difficult to collect, particularly from customers who were returning to standard offer service because they could not pay a competitive provider’s bill. Dirigo favored imposition of the re-entry fee during the first year as well as subsequent years but argued that the re-entry fee was "too high" and should only recover the costs of transfer. MPS also stated, however, that the rule should not distinguish customers by size, even though such a distinction was an inherent feature of the second alternative.

Enron argued that the risk of gaming was significant, particularly by aggregators of smaller loads. Enron apparently did not support either of the two proposed alternatives, as it suggested other alternatives such as charges that would be imposed only during certain months. Like the Coalition, it stated that no re-entry fee should apply to standard offer service if re-entry was due to the customer's competitive provider failure to provide service.

At the technical conference, an approach was discussed that would adopt the first alternative for larger customers and no restrictions on smaller customers. The Commission would retain the explicit authority to impose restrictions or charges on smaller customers if in the future, experience demonstrates that such measures are necessary. The participants at that conference generally commented favorably on that alternative. On the basis of the comments and the discussion at the conference, we provisionally adopt this approach. Thus, the provisional rule does not include any re-entry or opt-out charge designed to deter gaming by individual smaller customers unless, as explained below, those customers are aggregated into a load of greater than 50 kilowatts. It is our view that gaming by residential or small commercial customers of the pricing disparities between the variable competitive market and the fixed-price standard offer is less likely to have a significant detrimental effect than similar activity by larger customers. Larger customers (non-residential customers and aggregations of all customers having a demand of greater than 50 kW) will be subject to the opt-out provisions contained in paragraph 2.

Enron in its comments (and others at the technical conference) expressed concern about the possibility that aggregators of small customers might strategically transfer groups of customers in and out of standard offer service and that this might be as detrimental as gaming by larger customers. We share Enron’s concern. The opt-out fee provision of Paragraph 2 of subsection C therefore expressly applies to aggregators of loads (residential, non-residential or combinations) of more than 50 kilowatts.

In paragraph 3 of subsection C, we have retained the authority to address gaming by individual residential and small non-residential customers. Upon a finding of good cause, we may impose an opt-out charge similar to that for larger customers, a re-entry charge, or other measures will serve as deterrents. The Commission may order T&D utilities to implement such measures in their terms and conditions.

We have modified the timing of the applicability of the opt-out charge now contained in paragraph 2(c). In the proposed rule, the opt-out fee would not apply until the second time that a customer, who had returned to standard offer service, left prior to the expiration of 12 months. The provisionally adopted rule imposes the opt-fee the first time that a customer, who has previously obtained service from the competitive market and has returned to standard offer, leaves prior to the expiration of 12 months.

We have adopted this modification out of a concern that the approach in the proposed rule would not provide a sufficient deterrent against gaming. The original approach was intended to apply to *all* customers, not just to large, non-residential customers with a demand of more than 50 kW and, as such, was intended to provide a large degree of flexibility. The provisional rule still allows a reasonable degree of exit and entry freedom for larger customers prior to imposition of an opt-out charge. Under it, a large, non-residential customer may enter the competitive market on March 1, 2000, the first day of the competitive market (or may take service under the standard offer on that date and enter the competitive market subsequently), return from the competitive market, and become subject to the opt-out fee only if it seeks to leave again prior to the expiration of 12 months. By contrast, under the original approach, a customer could enter the competitive market once (either on February 1, 2000, or later), return, leave again and return again before being subject to the requirement of remaining for 12 months or paying an opt-fee prior to that time. Larger customers tend to be more sophisticated purchasers of energy and thus should need less flexibility to experiment with market. As such, the modification to the rule strikes a reasonable balance between flexibility and deterring gaming.

As proposed in the Notice, we have used 50 kW of demand as the dividing line between small and large non-residential customers. Residential customers of any demand level are classified as “small” because they are not likely to exceed 50 kW. BHE commented that the rule should use 25 kW as the dividing line; Dirigo proposed 20 kW. Both stated that those levels were consistent with definitions in the BHE and Dirigo members’ terms and conditions. CMP and MPS, on the other hand, supported the use of 50 kW. Although the commenters do not state a reason for their preference that the definition in the rule be the same as in their terms and conditions, we assume that a consistent definition makes it easier for utilities to identify how each of their customers is classified. It is, of course, impossible to choose a single dividing line that will satisfy all utilities. We have adopted the original proposal of 50 kW as an appropriate dividing line between those customers who are more likely to cause gaming problems and those who are not. It is also likely that commercial customers with a demand level of more than 20 kW will have a demand meter. It is therefore relatively easy for a utility to determine which customers have a demand of 50 kW; with lower thresholds it might be difficult or impossible to measure the demand of some customers.

The Coalition and Enron urged us to adopt "exceptions" of the second alternative's re-entry charge for occasions when a customer is terminated by its competitive provider (e.g., the competitive provider went out of business), or when the customer could not afford the re-entry charge. These issues are academic under the provisional rule. Smaller customers may exit and enter the standard offer without restriction. Larger customers are only subject to an opt-out charge rather than a re-entry charge. Some commenters suggested that a re-entry charge is preferable to an opt-out charge (at least for smaller customers) in that it encourages migration to the competitive market. An opt-out fee has the advantage, however, that no exceptions for inability to pay or for competitive provider defaults are necessary; nor will it be necessary for the T&D utility or the Commission to make such factual determinations. Moreover, if the experience of the telephone industry applies, it is likely that competitive providers will often pay opt-out charges (and the administrative fees required by subsection E) themselves in order to attract customers.

In arguing against either opt-out or re-entry fees for smaller customers, the Coalition suggested that if gaming is a problem, bidders would build that risk into their price. Dirigo, in connection with its argument that the proposed re-entry fees in the second alternative were "too high," suggested that standard offer providers "need to accept some market risks." Similarly, Enron suggested that the rule should not require the recovery of unbundled charges for the administrative cost of transferring customers and that such costs should be included in T&D utility rates. We disagree with the thrust of all of these arguments. It is better to deter frequent transfers in and out of the standard offer than impose the costs of such transfers on all standard offer customers, including those that do not transfer in and out frequently. Similarly, the general body of T&D ratepayers should not pay for the administrative costs caused by customers who switch in and out frequently.

We addressed the issue of the level of opt-out and re-entry charges in the Notice of Rulemaking, stating that they are designed to deter gaming and not to recover any particular level of cost. As noted above, Dirigo suggested that the opt-out fee should only recover the administrative costs of transfer. That approach would provide little or no deterrence.

The costs of transferring service are separately recovered through the fees required by subsection E.

At the technical conference the participants discussed the issue of who should receive the revenue from opt-out charges. Enron stated that standard offer providers should not receive "windfalls." The Public Advocate discussed the merits of rebates to standard offer customers as opposed to payment to standard offer providers, suggesting that payment of the charges to the providers might result in lower bid prices. We agree with the Public Advocate. In addition, although the amount of the charges is not intended to recover any particular level of costs, they could serve to compensate for excess costs incurred by standard offer providers if there is substantial gaming. We therefore conclude that opt-out charges should be paid to standard offer providers and have modified the rule accordingly.

4. Subsection D: Notice; Transfers of Service; Bill Calculation

The proposed rule included a moratorium between February 1 (one-month prior to the implementation of retail access) and April 1, 2000, during which customers could not choose to transfer to competitive service. Thus, if a customer did not sign up with a competitive provider prior to February 1, 2000, the customer would automatically be assigned to standard offer service and would have to wait until April 1 to transfer out. The purpose of this proposal was to mitigate administrative difficulties that might occur due to a large rush of customers to enter the competitive market.

We received only two comments about this proposal. CMP opposed the proposal, stating that it could accommodate all transfers within the proposed notice period of five days. MPS indicated that it believed the moratorium was too short, and suggested that until September 1, 2000, T&D utilities should have 30 days to complete transfers. During the technical conference, the participants discussed an alternative whereby T&D utilities would have a longer time (e.g., 15 days) within which to accomplish a transfer between March 1 and September 1, 2000 and a shorter period (five days, as originally proposed) after September 1, 2000. All of the participants at the technical conference, including the T&D utilities, supported or did not oppose this proposal.

We provisionally adopt the proposal discussed at the technical conference as subsection D, paragraph 1 (notice) and paragraphs 2 and 3 (transfer dates). As in the proposed rule, T&D utilities will transfer customers on the day of their normal meter reading, unless the customer pays an additional cost-based fee for transfer on another date, either with pro-rated billing (a lower fee) or a special meter reading (a higher fee). Between March 1 and September 1, 2000, notice must be provided 15 calendar days in advance of the normal meter reading date in order to be transferred on that meter reading date. If a customer provides less than 15 days' notice, the T&D utility is not required to transfer the customer until the next meter reading date. Thus, in effect, T&D utilities will have between 15 and 46 days to transfer a customer either in or out of standard offer service.

After September 1, 2000, the notice period is five business days in advance of the normal meter reading date. If the utility receives less than five days' notice, it may effect the transfer on the next meter reading date, i.e., up to 36 days later. In stating these maximum time limits (46 days prior to September 1, 2000; 36 days after September 1), we assume that meter readings occur monthly. Some utilities may not read meters monthly. Nevertheless, we do not believe it is reasonable to delay transfer for up to two months. Accordingly, the maximum time periods described above (46 days and 36 days) will apply to all T&D utilities, regardless of the normal frequency of their meter reading.

The original moratorium proposal (February 1 - April 1, 2000) contained an exception for customers who, for whatever reason, were disconnected from T&D service: those customers could “leave” standard offer service notwithstanding the moratorium. That exception is no longer necessary and has been deleted. Nevertheless, standard offer providers are likely to have an interest in knowing when customers leave or enter standard offer service. Accordingly, we have added a notice provision for customer movement to the list of matters in section 5(D) that must be addressed by the standard contract between T&D utilities and standard offer providers.

Paragraph 4 provides that a customer wishing to transfer on a date other than the regularly scheduled meter reading date may request the T&D utility either to prorate the bill or conduct an unscheduled meter reading. For either service, the T&D utility will charge the customer an additional fee as required by subsection E. The Commission received no comments about this paragraph and we have adopted it provisionally as proposed.

5. Subsection E: Administrative Fees

Subsection E of the provisional rule describes the administrative fees that a T&D utility may charge for all transfers both in and out of standard offer service. Those fees are designed to compensate a T&D utility for costs it incurs when customers request a transfer. They are not designed (as is the opt-out charge of subsection C(2)) to deter frequent transfers that are designed to game seasonal differences between competitive market prices and standard offer prices. Enron's comments and statements at the technical conference suggested that it is concerned that these fees will be "loaded" with a large amount of overhead costs and that they will act as a deterrent to free transfer between standard offer and the competitive market. In the provisionally adopted rule, we require that these fees be "cost-based." The fees must be filed as part of the T&D utilities' terms and conditions and therefore must be approved. The Commission will ensure that the fees are, in fact, cost-based and reasonable. For the reasons discussed in section IV(B)(3) in this Order, we reject Enron's argument that there should not be separate charges and that the costs of transferring customers should simply be included in T&D rates.

C. Section 3: Eligibility and Obligations of Standard Offer Service Providers

1. Subsection A: Eligibility Requirements

This subsection of the provisional rule contains the eligibility requirements for standard offer providers. These are: a license under State law to provide generation service, NEPOOL membership, and the posting of a bond or letter of credit.

a. license

No person commented on the requirement that all standard offer providers be licensed to provide retail generation service in Maine.

b. NEPOOL membership

Dirigo commented that NEPOOL membership is unnecessary because all standard offer providers within the NEPOOL control area must operate under the Independent System Operation - New England (ISO-NE) rules; the requirement thus adds unnecessary costs involved in NEPOOL membership. In addition, Dirigo noted that four Maine utilities[6] are not in the NEPOOL control area, but are in the Maritimes control area.

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[6]The four utilities are: Maine Public Service Company; Van Buren Light and Power; Houlton Water Company; and Eastern Maine Electric Cooperative.

The provisional rule maintains the NEPOOL membership requirement, but limits the requirement to standard offer providers that provide service within the NEPOOL control area; this limitation recognizes that some areas within Maine are in the Maritimes control area. Standard offer providers, at least initially, are likely to serve a large number of Maine customers after the advent of retail competition. For this reason, it is important to ensure that such providers have standing to participate in the regional market. The requirement of NEPOOL membership[7] will help ensure that the providers are reliable and capable to provide service.

Dirigo's concern appears to be a desire to exempt COUs from having to join NEPOOL. The concern is consistent with Dirigo's comments that COUs have the option of designating themselves as the standard offer provider in their areas. As we discuss in section V(B) of this Order, Dirigo later clarified its position as proposing that COUs be allowed to choose the standard offer provider for its territory, rather then actually becoming the provider. Under such an approach (which we do not oppose in concept), COUs would not be subject to the NEPOOL requirement.

c. financial capability requirement

The provisional rule requires each standard offer provider to obtain and file a bond, a letter of credit, or a corporate guarantee as evidence of financial ability to reliably provide service to customers. The provision also contains a formula that determines the dollar amount of these instruments; this formula is designed to approximate conservatively the damages that might result if a standard offer provider defaults on its obligations. The financial capability requirement has two purposes. One is to provide objective evidence that the standard offer provider has the financial and technical capability to fulfill its obligations and thereby minimize or eliminate any judgment that must be exercised in assessing bidders' qualifications. The other purpose is to provide funds in the event the standard offer provider defaults.

The financial capability amount approximates the difference between the cost of replacement power on the market (assuming market prices are higher at the time of default) and the cost of standard offer service from the defaulting provider. Ongoing customer revenues would cover the cost of

[7]As we discuss in section IV(C)(2) of this Order, the provisional rule requires that the standard offer provider be the entity obligated to serve the load under the ISO-NE rules. Our understanding is that such an entity must be a NEPOOL member.

replacement power up to the established standard offer price. The financial capability requirement (for 100% of the standard offer load) equals 50% of the accepted bid price, multiplied by the kilowatts or kilowatt hours sold in the T&D utility's service territory for the calendar year prior to the submission of bids. If the Commission selects more than one standard offer provider, the total required amount will be multiplied by each provider's market share percentage. Although no formula can precisely capture the consequences of a default, the financial capability requirement in the rule reasonably balances the uncertainties in the amount of the standard offer load, the risk of market price increases, and our desire to encourage, rather than discourage, prospective bidders.

The provisional rule includes the language of the proposed rule with several additions. The provisional rule specifies that the requirement can be met with a letter of credit or a corporate guarantee, as well as a bond. A corporate guarantee may be substituted for a bond or letter of credit if certain financial criteria are satisfied. These modifications provide additional flexibility for providers without sacrificing necessary protections. Additionally, the provision now specifies that proceeds, in the event of a default, will be paid to the T&D utility; this is consistent with the rule’s provision on default procedures discussed in section IV(I) of this Order. We have also added a provision that allows providers to reduce the bond, letter of credit, or corporate guarantee amount by one-half after the first year of service. The financial consequences of a default lessens with time because the amount of replacement power for the remaining period is reduced; accordingly, allowing a reduction in the amount will reduce the cost of the requirement while maintaining its protections.

Enron commented that a bond, in many cases, helps ensure that providers have the financial backing to follow through on their obligations, but that such a requirement may needlessly drive up the cost of service without providing any significant additional protection to consumers. Enron proposed that the rule allow standard offer providers that satisfy a specific financial test to provide a corporate guarantee that offers the same level of financial security as a bond. A corporate guarantee generally is an undertaking by a corporation that is affiliated with the primary obligor that, if the primary obligor fails to meet its obligations, the guarantor will pay an appropriate amount to compensate for that failure. Enron suggested the following criteria: (1) the corporation has a bond rating of BBB (Standard & Poor's) or the equivalent from other rating agencies; (2) the total assets of the guarantor shall be at least 5 times the amount to be secured; and (3) the current assets of the guarantor shall be at least 2 times the amount to be secured.

We agree that a corporate guarantee from an entity of sufficient financial strength is likely to provide a reasonable assurance that funding will be available to purchase replacement power in the event that a standard offer provider defaults. Credit rating agencies essentially provide the indication of financial strength that is the objective of the rule’s financial capability requirement. Moreover, measures of objective criteria similar to those proposed by Enron are reasonably easy to administer. However, we are concerned that a corporate guarantee would be less liquid than a bond or letter of credit in the event of a default. Accordingly, the required financial criteria must be at a level that minimizes the risk that the corporate guarantee will not be honored.

After considering Enron’s proposed criteria, we conclude that the second proposed criteria (assets equal to 5 times the amount of the obligation) is acceptable. We do not agree, however, that a BBB rating is sufficient. BBB is only one grade above non-investment grade; it would be possible for a guarantor at that level to slip below investment grade with relatively little warning. The rule, thus, requires a bond rating of “A” (Standard and Poor’s) or the equivalent from other listed rating agencies. Section 3(A)(3)(b) of the provisional rule provides that a guarantor meets the minimum bond rating requirement if (1) for a corporation rated by two of the agencies listed in the rule, both ratings equal or exceed the required level; (2) for a corporation rated by three or more rating agencies, all but one of those agencies rate it at the required level.[8] Finally, we have modified Enron’s proposed third criteria to require total common equity of 2.5 times the amount of the obligation (rather than 2 times current assets). If a guarantor were required to provide funding in the event of a default, it might choose to borrow the necessary funds; common equity is a better indicator of borrowing capacity.

The final sentences of paragraph 3(b) state the corporate guarantor’s obligation to report its financial status annually to the Commission, to report immediately whenever its bond rating does not meet the minimum requirement. If the corporate guarantor does not continue to meet the bond rating or

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[8] For example, if a guarantor has a rating of "A-" from S&P and "A2" from Moody's, the guarantor would not qualify based on the "A-" rating. If, however, the guarantor received an "A-" from S&P, and an "A2" from Moody's, and an "A" from Duff & Phelps or Fitch, the guarantor would pass the credit rating test.

the other financial criteria, the Commission may require the standard offer provider to post a bond or file a letter of credit.

BHE stated that the required financial capability requirement amount seems excessively costly and potentially redundant to NEPOOL/ISO requirements. If a bond is required, BHE suggested that it be based on the replacement cost damages only for the time period necessary to obtain a new provider. At this point, we cannot accept BHE's suggestion that our financial capability requirement is redundant to the ISO-NE or NEPOOL rules. Although it appears likely that ISO-NE or NEPOOL will adopt some rules in this regard, that has not yet occurred and we thus have no basis to conclude that ISO-NE rules would be sufficient. In addition, ISO-NE rules will not apply to providers in areas of Maine that are not within the NEPOOL control area. We will, however, review the ISO-NE rules when they are final. If such a review reveals that our requirement is redundant to ISO-NE rules, we will consider a waiver or modification of the requirement as permitted in section 10 of the rule. In reaction to BHE's comment on calculating damages, we note that the proceeds are intended to minimize the need to raise standard offer prices in the event of a default; thus, proceeds may be necessary to cover costs throughout the remainder of the standard offer period, not just the time to obtain a new provider.

MPS commented that the requirement should be based on the amount of standard offer service actually provided rather than on a formula. However, the actual amount of standard offer service, as well as the prevailing market prices at the time of any default will not be known prior to the initiation of the service and will change over time. A formula for estimating potential costs is the only way to proceed. If MPS's comment referred to possibility of multiple providers, we note that the required amount is apportioned among multiple providers within a service territory.

Dirigo stated that COUs should not have to file a bond because they are not appropriately considered the actual providers of standard offer service. In the alternative, Dirigo's view is that existing Maine utilities should not be subject to bond requirements because their technical ability to provide service is known from their historic obligations in this regard. Dirigo also stated that if a bond is based on total sales in the service territory, it should exclude sales to partial requirement customers who are not subject to standard offer service. We agree with Dirigo that, if the COU is not the actual provider of service, it should not have to comply with the financial capability requirement. (We generally address the role of COUs regarding standard offer service below in section V(B) of this Order.) We see no justification, however, for exempting any entities, such as existing utilities, on the basis of their status. Standard offer service will be provided through a competitive process and it would be anti-competitive and unfair to have differing requirements based on a historic status. It is in the public interest for all such providers to demonstrate, in an objective manner, that they are currently financially able to fulfill their obligations. The market is changing. The financial strength of an electric utility (soon to be a T&D utility) and its marketing affiliate (in the case of investor-owned utilities) may be different than it was under its former, known status as a vertically integrated utility. To the extent relevant, a utility's proven track record may be taken into account by the issuer of a bond or letter of credit in setting its price. Finally, Dirigo has suggested that the calculation of the required amount exclude load not be subject to standard offer service. However, neither the Commission nor the T&D utility would necessarily have access to information about the amount of excluded load. If, however, it becomes apparent that significant amounts of existing load will be excluded from standard offer service, we will consider a waiver of this provision to allow for a substitute formula that takes the reduced requirements into account.

2. Subsection B: Obligations of Providers

Subsection 3(B) of the provisional rule contains the obligations of standard offer providers. These provisions require providers to: (1) deliver generation to specified points on the transmission system; (2) provide a specified portion of total requirements at their bid price; (3) comply with renewable resource portfolio requirement; (4) comply with ISO-NE requirements; (5) comply with Commission approved contract with the T&D utility; and (6) maintain their technical and financial capability.

The provisional rule incorporates the provisions of the proposed rule with one modification. We have clarified that providers within the NEPOOL control area must be the designated load serving entity with an ISO-NE settlement account, as well as generally complying with all applicable ISO-NE and NEPOOL rules. This requirement offers additional assurance that providers will be technically and financially capable to satisfy standard offer service obligations.

The Commission received comments on only one of the proposed obligations: that multiple providers are obligated for a specified portion of the standard offer load. Enron commented that multiple providers in a T&D service territory should be assigned individual standard offer customers so that there is a direct retail customer relationship. No other commenter objected to this provision.

The provisional rule defines a standard offer provider’s obligation as all-requirements, which means each provider must supply its percentage share of standard offer service, whatever that turns out to be in kW or kWh terms. The obligation includes sufficient energy and capacity to cover line losses within the T&D system. The all-requirements approach is the most workable and equitable way to define standard offer providers’ obligations. This approach works particularly well in light of the legislative mandate to encourage multiple providers within a T&D utility service territory. With multiple providers, other approaches would require direct assignment of individual customers to standard offer providers. Direct assignment would be administratively complex, require measurement or estimation of individual customer usage patterns and create controversy if customers view their assignment as less favorable than, for example, their neighbor’s. The approach set forth in the provisional rule also provides for an accurate and simple way to ensure that no marketing affiliate of a T&D utility violates the statutory maximum of 20% of standard offer load contained in 35-A M.R.S.A. § 3212(2)(C).

Enron’s proposed direct assignment of individual customers to standard offer providers would be difficult to administer and potentially controversial in service territories with multiple providers, particularly if providers charge different prices. Because section 3212(2) requires that we adopt methods that allow for more than one standard offer provider in each T&D service territory (if doing so does not have a significant adverse rate impact), the potential for controversy is likely to be realized. There are two possible approaches to implement direct assignment. One approach is for customers to pay the bid price of the provider to whom they are assigned. This, however, would result in some standard offer customers paying lower prices than others within the same territory. A possible alternative is to charge all customers the same blended price regardless of the price actually charged by the provider to which they are assigned. Under either alternative, protocols would have to be developed and continuously implemented to allocate customers among providers as they enter and exit the standard offer. Additionally, the second alternative would require continuous allocation of revenue because customers would not be paying the price charged by their provider.

Enron suggested that the Commission allow losing bidders (or a specified number of top bidders) to match the lowest bid as a way to accommodate direct assignment with the existence of multiple providers. Under this approach, there could be multiple providers only if each charged the same price. Such a proposal is inconsistent with the Legislature's judgment that some level of rate impact is acceptable to promote multiple standard offer providers.[9] Additionally, we are concerned that an opportunity for bidders to match the lowest bid will not yield the lowest possible prices because bidders in the first round might bid high knowing they would have a second opportunity.

D. Section 4: Credit and Collection; Customer Complaints

Section 4 states that three Commission Rules, Chapters 81 (Residential Utility Service Standards for Credit and Collection Programs), 86 (Disconnection and Deposit Regulations for Non-Residential Utility Service) and 870 (Late Payment Charges, Interest Rates to be Paid on Customer Deposits, and Charges for Returned Checks), will apply to standard offer service. Those rules presently apply to the bundled service (generation, transmission and distribution) offered by electric utilities. The application of these rules to standard offer service is consistent with the goals that standard offer service be similar to existing bundled service and that the administration of the service be simple and understandable to customers. For example, there could be confusion if different deposit and disconnection rules applied to standard offer service and T&D service. Commenters generally agreed with this approach. Enron filed the only comment that addressed this section. Enron argued:

> the Commission should narrow the scope of disconnection and related protections to those customers who are truly needy. Continuing cumbersome disconnection requirements for customers who have no special financial needs can only drive up the cost of standard offer service.

Presently, Chapters 81, 86 and 870 provide procedural and substantive protections and limitations on credit and collections practices, disconnection of customers, that are applicable to all customers. Those protections include limitations on when a utility may require a deposit, the amount of late payment charges, and disconnection of customers. We see no reason why safeguards and limitations should not continue to apply to all customers. In addition, applying those provisions

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[9]The rule accomplishes this by defining adverse impacts in terms of a percentage rate differential (*see* section IV(H(3)) of this Order), and charging standard offer customers a weighted average among standard offer bids.

only to the “truly needy” or some other limited group would require T&D utilities and/or ourselves to develop and administer a means test. As noted in the Notice of Rulemaking, however, we will be reviewing our credit, collection and disconnection rules, and we will consider all circumstances that may change in emerging competitive utility markets. We will address the protections for customers that are necessary for standard offer service in those rulemakings. Any changes we make will apply to standard offer service because of the incorporation of those rules by section 4 of the provisional rule.

E. Section 5: Obligations of the Transmission and Distribution Utility

Section 5 of the provisional rule contains the obligations of the T&D utility with respect to standard offer service. These obligations are to: (1) deliver power to standard offer customers; (2) bill and meter standard offer service; (3) administer service connections and terminations; (4) file standard contracts; and (5) comply with requirements regarding an affiliated standard offer provider. The Commission received comments only on the billing and metering provision.

Under the provisional rule, the T&D utility performs all metering functions and provides combined bills to standard offer service consumers. The bills will separately state charges for generation and for T&D utility service and also prominently identify the standard offer provider(s) so that consumers are made aware of the entity or entities that are providing their generation service.

We adopt this approach, rather than requiring or allowing the standard offer providers to provide their own billing or metering functions, for several reasons. First, a single bill is convenient and satisfies the goal that changes in the nature of service for standard offer customers should be minimal. Second, it reduces customer confusion in that a customer need call only one entity -- the utility -- for all aspects of service. Replacement at this time of the T&D utility’s billing and metering services by another provider is likely to create complexity and confusion, and would constitute a significant departure from the nature of current service. Third, the need to maintain two billing systems (or more, if there are multiple standard offer providers) may increase the total cost of standard offer service. Fourth, the T&D utilities already have billing and metering systems and are not likely to incur significant incremental costs in making the changes necessary for standard offer service and for an unbundled bill. Fifth, consistent with the legislative policy embodied in section 8(C)(4), we may select three or more standard offer providers. The bid prices of those three providers will almost certainly differ. It would be impractical to assign customers to individual standard offer providers because, under section 2(A)(4), their prices will be averaged. Without assignment of customers it would certainly be impossible to allow an individual standard offer provider to meter and bill customers.

Enron argued that the provision of billing and metering should be part of the standard offer bidding process and provided competitively. In this way, the lowest bidder for quality billing and meter services would provide the service; the T&D utility would continue the billing and metering function if it is the lowest cost provider. No other commenter opposed the rule's billing and metering provisions.

Enron's proposal would add administrative complexity and is workable only if individual customers are directly allocated to multiple standard offer providers, an approach we have rejected. *See* section IV(C)(2) of this Order. Additionally, Enron's approach would require the Commission essentially to conduct a separate bid process for billing and meter services, ensure that such services could be adequately provided by the bidders, and consider the impact on the utility and customers of possibly stranding billing and metering costs.

Section 3202(4) requires the Commission to adopt rules concerning billing and metering service competition by March 1, 2002. The implementation of billing and metering competition raises substantial issues.[10] The Legislature anticipated that competitive billing and metering need not be addressed prior to the commencement of retail competition, although the Commission may adopt rules earlier than that date. Because such issues have not been addressed and may not be resolved prior to 2000, it is premature to consider billing and metering competition in the context of the standard offer, and we express no views on those issues at this time. When we conduct our billing and metering competition rulemaking, however, we will review whether alternative providers of billing and metering services might be appropriate for the standard offer.

F. Section 6: Information Provided by Transmission and Distribution Utilities to Potential Bidders

Section 6 governs the T&D utilities' provision of customer usage and credit information to standard offer bidders.

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[10]These include duplication of facilities, stranded cost calculations and recovery, standards and regulation for non-utility meters and installation, and rules and procedures for verifying and transferring funds.

Consistent with 35-A M.R.S.A. § 3212(2), the provisional rule allows T&D utilities to recover the costs of providing this information in their rates. The utilities will provide the information on a class basis, aggregated so as to shield individual customer-specific information.

The provisional rule requires the disclosed information to be standard, based on a historic period, and provided to all bidders at the same time, thus preventing any player from gaining an advantage by access to certain data, or earlier access to data. The rule requires T&D utilities to comply with all restrictions under 35-A M.R.S.A. §§ 3205, 3206 and 3207 applicable to communications with their marketing affiliate. Utility affiliate personnel (or utility personnel in the case of a COU) may not use any information in preparing their standard offer bids that has not been provided to all standard offer bidders. Finally, the Commission will conduct a proceeding to more precisely define the information and its format so that information is adequate, consistent and in a form that is most usable to potential bidders.

We sought comment on whether release of information on an aggregate customer class basis would sufficiently protect confidentiality for classes with small numbers of customers. The Coalition and CMP noted that, for classes with only a few customers, aggregate load data could reveal customer-specific information. CMP suggested that the Commission adopt certain limitations, such as exempting provision of load data for customers over a specified size, requiring each class to have a defined minimum of customers, and requiring that each customer’s load be less than a specified percentage of the class load. The Coalition proposed that the rule allow a customer to petition the Commission for protection if it believes the confidentiality of its customer-specific data was at risk. We decline to adopt these suggestions. In the proceeding to determine the scope and format of the data T&D utilities will provide, we will establish the degree of aggregation needed to shield customer-specific data.

MPS commented that the research necessary to compile the load data required by the provisional rule would cost about $250,000 and could add approximately 3% to the cost of standard offer service in its territory. MPS suggested that the research be done no more frequently than once every two or three years. MPS also commented that paragraph 3 of the proposed rule requiring T&D utilities to certify that they compiled load data with due diligence and reasonable care is unclear and suggested that their contracts with the standard offer providers release T&D utilities from damage or loss to the provider as a result of data inaccuracies. Dirigo proposed that the rule require utilities to provide whatever information they have, but not to develop additional information.

We have replaced the phrase “due diligence and reasonable care” with “due care.” This terminology is commonly used and expresses a lack of negligence. We do not intend that T&D utilities certify the information to be perfectly accurate, ~~n~~or that they be liable for damages due to inaccurate data. T&D utilities should, however, use reasonable methods and practices to assemble the data. Regarding MPS’s and Dirigo’s comments about the freshness and scope of the data, these will be established in the proceeding conducted pursuant to paragraph 5. We note that the statute specifies certain data that must be provided; thus Dirigo’s suggestion that utilities just provide what they have is unlikely to suffice.

G. Section 7: Standard Offer Bid Requirements and Conditions; Contents of Bids

The provisional rule is designed to satisfy three basic objectives with respect to the standard offer provider selection process. These are: (1) to achieve the lowest possible rates for standard offer customers while encouraging multiple providers of standard offer service in each T&D service territory; (2) to use a single, objective and easily comparable criterion of bid price to select among potential providers; and (3) to minimize complexity in administering the process.

Subsection A and B govern the general requirements and contents of the standard offer bids.

1. Subsection A(1): Duration of Standard Offer Obligation

The proposed rule contained two alternatives for the duration of the standard offer obligation: (1) bids required for a 2-year period; and (2) bids required for both a 2-year and a 3-year period. MPS commented that the alternative of requiring only two-year bids is sufficient. The Coalition and BHE stated that it would be preferable to allow for both 2-year and 3-year bids as risk free and potentially advantageous. Dirigo argued that COUs should be exempt from the bid duration requirement.

The provisional rule includes the first alternative: all bids for the initial standard offer term will be for 2 years. This approach simplifies the bid evaluation process and maximizes the comparability of bids. If both 2 and 3 year bids were required, there may be situations where the Commission would have to choose between a favorable 2-year bid and a bid that may be more favorable over three years, but more expensive in the first two years. In addition, due to uncertainties of the newly restructured market, it may be difficult for providers to commit to favorable terms over a 3-year period. We also decline to exempt COUs from the bid duration requirement; our views of the treatment of standard offer service in COU territories are discussed in section V(B) of this Order. The provisional rule allows us to establish a different term for subsequent standard offers.

2. Subsection A(2): Form of Pricing

The proposed rule offered two alternatives for how the standard offer bids could be priced: (1) fixed dollar-per-unit prices for the entire period; and (2) specified dollar-per-unit prices that may change once a year over the bid period. MPS and the Coalition stated that the price should not change over the bid period to promote rate stability and minimize customer confusion. BHE commented that the first alternative is more customer friendly, but may encourage gaming. Dirigo proposed that price changes contained in existing contracts remain intact.

The provisional rule requires the prices to remain constant over the initial two-year standard offer period. This helps maintain the simplicity of the standard offer service and promotes the comparability of the bid prices; the approach would avoid the need to compare the desirability of a relatively lower bid in the first year and a higher bid in the second year against more stable bid prices in the first two years. Because the initial standard offer period is only two years, constant prices over that period should not distort price signals or provide opportunities for gaming to any significant degree. Regarding an exemption for existing COU contracts, we note that these are not standard offer contracts. Dirigo appears to be proposing that existing COU supply contracts be used instead of standard offer bids. Section 3212 requires a specific bid process for standard offer providers for each service territory. To the extent that COUs have supply contracts that extend past 2000 that cannot be avoided or mitigated, the output presumably would be sold with the difference between the contract price and the market price subject to the stranded cost provisions of section 3208.

3. Subsection A(3): Limitation on Affiliate Bids

This subsection specifies that affiliates of large T&D utilities may not bid for more than 20% of standard offer load consistent with 35-A M.R.S.A. § 3212(2)(C). The Commission did not receive any comments on this subsection.

4. Subsection B(1): Price for Meeting Obligations

This subsection specifies that standard offer bid prices must be for meeting all obligations under the rule. The Commission did not receive any comments on this subsection.

5. Subsection B(2): Rate Structure and Design

The subsection requires bid prices to conform to the rule’s rate structure and design as stated in sections 2(A)(2), (3) and (5). CMP commented on the rule’s rate design requirements, which we discussed in section IV(B)(1) of this Order. The Commission did not receive any other comments regarding the provisions of this subsection.

6. Subsection B(3): Core Customer Class

This provision requires standard offer bids to include bids for each of T&D utilities’ core customer classes. The requirement promotes the objective evaluation of bids by avoiding the need to compare favorable bids for a limited number of classes against bids for other classes and ensures standard offer service is available to all customers. The Commission did not receive any comments on this subsection.

7. Subsection B(4): Bids For Portions of Standard Offer Requirements

The provisional rule allows standard offer bids to be for a portion of the total standard offer requirements, but they must be in multiples of 20% of the total standard offer requirements. The provision has been modified from the proposed rule to specify that all bids must include bid prices for increments below the highest bid amount; the proposed rule permitted but did not require such bids. For example, if a bid contains a price for 60% of the load, it must also contain bid prices for 40% and 20%. This is necessary to ensure the Commission can implement the multiple provider provisions without requiring a provider to serve a portion of the load at a bid price offered for a substantially larger portion of the load.

MPS recommended that the rule should allow bids in increments of 10%, stating that 20% increments can involve loads over 100 MW and a smaller increment would maximize the number of bidders. The Coalition supported the 20% increment provision.

The inclusion of the 20% increment provision strikes a reasonable balance between allowing bidders the flexibility to bid for only portions of the standard offer service, while limiting how small any individual obligation can be to 20% of the total. This reduces complexity in the selection process by avoiding the need to review a large number of small bids.

8. Subsection B(5): Statement of Ability to Satisfy Financial Capability Requirements

The provisional rule requires each bidder to provide a certified statement from a licensed financial institution authorized to conduct business in Maine that it will provide a bond or letter of credit to the bidder consistent with the financial capability provisions of this rule. We modified the language in the proposed rule to replace the subjective reference to a "recognized and reliable" financial institution with a requirement that the institution be duly licensed and have a presence in Maine. We have also added language stating that, in lieu of a financial institution statement, bidders may include a certified statement from itself or an affiliated corporation that it will provide a corporate guarantee in compliance with the financial capability requirements of the rule (section 3(A)(3)); such a statement must include evidence that the corporation satisfies the financial criteria necessary for the corporate guarantee option. *See* section IV(C)(1)(c) of this Order.

This provision is a central part of our overall objective to design the bidding and selection process so that the single evaluation criterion is price. The provision of the required certification should provide sufficient indication that the bidder will be able to perform its obligations as a standard offer provider. Bidders not able to obtain the certification will be rejected. The requirement allows the Commission to focus on the bid price, without the need for subjective evaluation of the financial and technical capability of bidders.

The Commission did not receive any comments on the provision requiring that bids must include evidence of ability to satisfy the rule's financial capability requirements.

H. Section 8: Bidding Procedure and Selection

1. Subsection (A) and (B): Bidding Procedure and Rejection of Bids

The provisional rule's bid selection process is designed to be simple to administer, requiring certain events to occur on specified dates with reference to the date the Commission selects providers. Under the rule, the Commission establishes a list of potential standard offer providers for each of the T&D utility service territories through a wide solicitation of interest. The Commission then issues a request for standard offer bids to persons on the list, along with the standard contract, 120 days prior to selection date. On the same date, the T&D utilities will provide the information required by the rule to interested bidders. Bidders will have 60 days to submit bids. The Commission will then have 60 days to select the bidder for each service territory. The rule also states that the Commission must reject bids that do not comply with the bidding requirements. The Commission did not receive any comments on these provisions.

2. Subsection C(1): Selection Date

As required by 35-A M.R.S.A. § 3212(2), the provisional rule states that the selection date for the initial standard offer period shall be July 1, 1999. In our Notice of Rulemaking, we asked for comment on whether the Legislature should consider changing the July 1, 1999 date so that it would be closer to the beginning of retail access. MPS commented that July 1 date is advantageous because the standard offer price will become a benchmark for competition; the longer the period between the selection and beginning of retail access, the more opportunity for competitors to enlist customers. In our view, a change in the selection date is desirable. It would allow potential bidders to better assess loads and costs that would occur after March 1, 2000. This reduces bidder risk and should translate into lower bids. Accordingly, we will ask the Legislature to change the date by which providers must be selected to December 1, 1999.

3. Subsection C(2)(3)(4)(5): Selection of Multiple Providers

Section 3212(2) requires the Commission to consider methods to ensure, to the extent possible, that there are at least three standard offer providers in each T&D utility service territory as long as this does not result in significant adverse impact on rates. To comply with this requirement, the provisional rule specifies that the Commission will choose multiple providers within each territory as long as doing so will not increase total electric rates of standard offer customers by more than 0.5%. The provisional rule also states that each selected provider will receive the price it has bid, although pursuant to section 2(A)(4), customers would pay a weighted average of all providers' prices. The provisional rule has been modified from the proposed rule in two respects. First, the provision restricting the number of providers in each territory to three has been removed as a means to ensure that the entire load is served at the lowest prices.[11] Second, subsection C(3) provides for breaking a tie by stating that, if winning bid prices are identical, the Commission may act to break the tie through such means as discussions with the tied bidders or through a re-bid.

MPS and BHE commented that the criterion for significant rate impact of 0.5% of the ***total electric bill*** is too high and should be replaced by 0.5% of the *standard offer component of the bill*. The concern is that our proposed differential may increase the standard offer price and reduce the incentive to minimize bids. The determination of a threshold for a significant rate impact is clearly one of judgment. We have balanced price impact with the legislative goal of promoting multiple providers. Too small a price impact could thwart the legislative goal; too large would cause unacceptable adverse price impacts. An impact on the total bill of greater than 0.5% is a reasonable balance of these objectives.

The Coalition expressed concern that limiting the number of providers to three and allowing bids in 20% increments may result in bids that do not cover the entire standard offer load. We have addressed this concern by allowing more than three providers in such an event.

The Coalition also suggested a “green tie-breaker” for a situation in which there are identical bid prices; in such a case, the Commission would choose bidders with the most renewable resources. We have decided to address the possibility of identical bid prices by the method described above, including a re-bid if necessary. This approach promotes the bid process objective of minimizing standard offer prices. Additionally, a green tie breaker raises implementation issues that would need to be resolved, including a method for verification and for addressing the continual changes in providers’ portfolios. Moreover, we believe the Legislature has addressed “green” issues in its renewables portfolio requirement. We find no basis in the legislation for extending a preference for any particular source of power into the standard offer bid process.

Finally, the Coalition and MPI stated that because COU territories are small, it may be appropriate to choose only one provider. We do not have the authority to adopt this suggestion. Section 3212(2) requires the Commission to promote

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[11] For example, if the Commission received only five bids for 20% of the load, it would need to select all five bidders so that the entire load is served. Additionally, there may be situations where selecting more than three bidders would result in lower overall prices than fewer providers.

multiple providers “in each transmission and distribution utility service territory.” This language is clear and does not provide an exception for COU territories.

I. Section 9: Failure of Standard Offer Provider to Provide Service

The provisional rule specifies a series of actions the Commission would take in the event a selected provider fails to fulfill its obligations. It is our expectation that the rule’s financial capability requirements will make such an event unlikely. However, if a default did occur, the rule contains provisions designed to replace the provider in a manner that minimizes the need to increase standard offer price. If a failure to provide service occurs, the Commission has the option to ask other providers within the service territory to provide replacement service at the defaulting provider’s prices; allow any other standard offer provider in the State to provide replacement service at the defaulting provider’s prices; or initiate a bid process to choose a new provider as soon as possible. In the meantime, or if it is too late in the standard offer term to obtain new providers, the T&D utilities will use the revenue received from the standard offer customers (that the utilities previously paid to the defaulting provider) to pay for the energy that continues to be supplied to customers through the New England grid.[12] The provisional rule specifies that the proceeds from the defaulting provider’s bond, letter of credit, or corporate guarantee will be used to defray any additional costs of replacing standard offer service. This provision has been modified from the proposed rule consistent with the change in the rule that allows a letter of credit or corporate guarantee, as well as a bond to satisfy the financial capability requirement. *See* section IV(C)(1)(c) of this Order.

BHE stated that the required T&D activity under the rule may violate the statutory restrictions on the retail sale of electric energy by T&D utilities and expressed a concern that it would not be able to plan for the load. Our view is that the required T&D utility actions do not constitute selling electricity at retail and, thus, are not prohibited by the Act. The T&D utility simply uses available funds to pay for the electricity that is, in essence, automatically provided to standard offer customers in the event of a default. However, our interpretation of the statute is not certain. Thus, we will seek a modification to the Act that clarifies that the T&D utility can

[12]In the event standard offer prices exceed market prices at the time of a default, the excess will be returned to standard offer customers.

act in a manner contemplated under the provisional rule in the event of a standard offer default.

In reaction to BHE’s concern that it would not have time to plan for load, under the regional wholesale system there will be rules and provider obligations designed to ensure adequate supply in the region, including for Maine’s standard offer load. We do not expect BHE or any other T&D utility to plan for this load in the traditional sense. Any T&D utility obligation to provide supply in the event of a default should be short-lived; its obligations will exist only for the time period it takes for the Commission to secure an alternative provider of standard offer service.

MPS commented that if a T&D utility incurs costs in excess of the financial capability requirement proceeds and the revenue from standard offer customers, the utility must be permitted to recover the additional costs through a reconciliation mechanism. In the event a utility incurs such costs, we agree that the costs should be recovered (most likely through standard offer price increases). T&D utilities should not be at financial risk through any obligations that they have in the event a standard offer provider fails on its obligations. We decline, however, to specify any particular cost recovery mechanism at this time. We would decide specific ratemaking treatment at the time such action becomes necessary.

CMP stated that if there is more than one standard offer provider in a service territory, the other standard offer provider(s) should provide the temporary service. We do not adopt CMP’s suggestion. It is preferable for the T&D utility to act in the temporary role of paying for replacement power because it already has the obligation to collect and transfer standard offer customer revenue to providers. The provisional rule does give the Commission the option to determine whether other providers would voluntarily provide service.

Dirigo commented that we should add a reference to the rules of the Maritime control area along with those of the ISO-NE in the provision regarding the T&D utilities’ payment for replacement service. We have accepted this suggestion.

V. RESPONSE TO GENERAL COMMENTS

In this section, we discuss comments addressed to the general approach contained in our standard offer rule.

A. Basic Structure of Service

Enron challenged the provisional rule's basic structure for the provision of standard offer service by characterizing it as a "wholesale model" that is inconsistent with the Act and the public interest. Enron stated that, under the rule's approach, service is not provided directly to the customer and there is no contractual relationship with customers. Rather, the customers essentially receive bundled service from T&D utilities in a manner that to closely resembles today's electric service. No other commenter objected to the basic structure of the rule in this regard.

We do not find the label of "wholesale model" as opposed to "retail model" to be meaningful in this context. In essence, Enron objects to several of the rule's individual provisions that, taken together, it characterizes as wholesale service. These are: (1) the provisions that maintain the T&D utility as the entity responsible for customer contacts, billing and metering; (2) and the provision allowing for multiple standard offer providers under which providers are responsible for a percentage of total standard offer service, rather than designated customers. We have discussed the individual merits of each of these provisions. *See* sections IV(C)(2) and IV(E)(1) of this Order. Here, we respond to Enron's comments that, as a whole, the rule's design results in a wholesale service that is not envisioned by the Act.

We disagree that the form and structure of standard offer service required by the provisional rule constitutes a wholesale service. There is no entity buying from providers and re-selling the service to consumers. The standard offer provider(s) is the entity legally responsible for providing generation service to retail standard offer customers. It has the obligation to secure the necessary resources and provide generation service to retail customers. The T&D utility never takes title or otherwise controls generation resources necessary for the provision of standard offer service, nor does it have any obligation to provide retail generation service. The fact that customers are not directly assigned to a specific provider (if there is more than one) and that the T&D utility remains the entity responsible for customer contacts, billing and metering for both generation and T&D service does not transform the provision of standard offer service into wholesale service.

We agree with Enron that the provisional rule closely resembles current service; we disagree with Enron, however, that this result is inconsistent with the Act. Standard offer service, by its nature, should mirror existing service from the customer's perspective. A major purpose of the service is to avoid significant disruptions in service (for a period of time) for those customers who are not immediately interested or able to make the effort necessary to enter the competitive market. Standard offer service allows customers to become familiar gradually with the radically different means by which electricity is provided and to become comfortable with choosing a competitive provider. It is prudent to begin the shift to a competitive retail market carefully and deliberately, and to reassess our basic approach to standard offer service after retail competition has existed in Maine for several years. In the meantime, the provisional rule does take steps, as discussed above, to inform standard offer customers that their service is no longer provided by a single entity by requiring that the bills separately state standard offer charges and prominently identify the entity or entities that are providing the generation services.

B. Selection of Providers in COU Territories

Dirigo commented that the generation service provided by COUs should become the standard offer service within the COU territory; the COU would acquire generation resources through a bid process, subject to Commission review. Dirigo argued that, in the absence of such an approach, there would be two similar services within a territory, both provided through a bid process for the same purpose; such a result would be confusing to customers. Dirigo stated that COUs that provide standard offer service are not the standard offer providers; the actual providers are those entities that are selected through the bid process. During the technical conference, Dirigo clarified that it was essentially proposing that the COUs act in lieu of the Commission as the bid process administrator; the COUs, rather than the Commission, would solicit bids and select the standard offer provider.

The statute in this regard is quite clear. Section 3212(2) states that the Commission shall administer the bid process to select standard offer providers and that process should include a method to encourage at least three providers in each territory. For this reason, we cannot accept Dirigo's proposal. However, we have no objection to a legislative change that would allow COUs to be the entity to administer the standard offer bid process in their territories as long as they act in accordance with the Commission's selection rules and criteria. Accordingly, we would not oppose a modification to the legislation that would allow COUs to act in this manner.

C. Municipal Aggregation as Standard Offer Service

The Coalition and Cumberland County proposed that cities and towns have the option to aggregate standard offer load and, in essence, become the standard offer provider within their borders. This would occur only through the appropriate political process necessary for such governmental decisions. Under the proposal, the governmental entity would provide standard offer service if it could do so at a lower price than the standard offer provider selected through the Commission bid process. The cities or towns would conduct a bid process subject to Commission approval, but would not have to comply with the standard offer bid rules, nor would they have to comply with provider obligations (e.g., posting a bond) that might hinder their ability to provide the service. According to the Coalition and Cumberland County, the benefits of such an approach include local control and accountability, local knowledge of resident needs, a promotion of municipal aggregation, and municipal experience in public bidding and community contracting.

We cannot support the Coalition/Cumberland County proposal both because it would violate the Act and does not appear to be a workable approach or consistent with the overall public interest. As mentioned above, section 3212(2) unequivocally states that the Commission shall administer the bid process pursuant to Commission-adopted rules that the Legislature will explicitly review. A provision that allows local governments to opt to become the standard offer provider within their borders and administer a bid process subject to their own rules is clearly contrary to the statute.

Moreover, the Coalition/Cumberland County proposal is problematic on its merits. Under their proposal, it would appear that the Commission would administer its bid process and choose a provider(s) for the T&D territory pursuant to the standard offer rules. At any time subsequent to the selection when the bid price is known, a local government could attempt to obtain a lower price and then act to become the standard offer provider within its geographic area. This would put the standard offer provider in an untenable position of having to bid on standard offer load within an existing T&D utility under circumstances where large portions of that standard offer load may suddenly obtain service from another provider. The high degree of uncertainty inherent in such an approach could cause an increase in standard offer bid prices as an offset to the provider's risk.

An alternative approach under which a local government chooses to opt-out of the standard offer before the initial bids are presented is also problematic. Governmental entities would have to opt-out before potential standard offer providers submit their bids so that bid prices would not reflect the risk of a sudden loss of load. If the local government is required to opt out prior to the standard offer bids, it could not know whether the price of its service would indeed be lower than that of the standard offer providers. Any such advance opt-out would have to be final and irrevocable; the municipality (and customers within their borders) would bear the risk that its standard offer price would turn out higher than the low bids later received by the Commission. Allowing municipalities to opt back in after a failed attempt to obtain a lower price presents similar provider uncertainties as an opt out after bids are submitted. Finally, allowing geographic areas within existing territories to opt out would make the standard offer process more complex and possibly diminish the advantage of geographic cost averaging that may exist for generation in current service territories.[13]

To conclude, we note that if a local government can provide a lower price than the standard offer provider, it may become an aggregator under the statute and provide a service option to its citizens. That may occur, for example, if a competitive provider sought to provide the electricity needs for a local government’s buildings and facilities, and simultaneously offered attractive electricity prices for residential citizens; in such a case, the town might decide to provide what is in essence an aggregation service to its citizens for those who want to choose it. This approach is similar to “affinity” marketing of products such as credit cards and would increase choices to citizens in municipalities, rather than decrease them as would occur under Coalition and Cumberland County proposal.

Accordingly, we

O R D E R

1. That the attached Chapter 301, Bidding Processes and Terms and Conditions for Standard Offer Electric Service is hereby provisionally adopted;

2. That the Administrative Director shall submit the provisionally adopted rule and related materials to the Legislature for review and authorization for final adoption;

3. That the Administrative Director shall file the provisionally adopted rule and related materials with the Secretary of State; and

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[13] Section 3212(1) requires the retention of geographic averaged prices for all customers in the same class.

4. That the Administrative Director shall send copies of this Order and attached rule to:

   A. All electric utilities in the State;

   B. All persons who have filed with the Commission within the past year a written request for notices of rulemakings;

   C. All persons on the Commission's list of persons who wish to receive notice of all electric restructuring proceedings;

   D. All persons who have filed comments in Docket No. 97-739; and

   E. The Executive Director of the Legislative Council, (20 copies).

Dated at Augusta, Maine this 11th day of February, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt